

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 157 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE C.K. THAKKER  
and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : NO

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PATEL SHIVABHAI NARANDAS

Versus

PATEL BHOLABHAI MADHAVLAL

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Appearance:

MR PB MAJMUDAR for Petitioners  
UNSERVED AS EXPIRED for Respondent No. 1  
SERVED for Respondent No. 2  
NOTICE NOT RECD BACK for Respondent No. 4

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

Date of decision: 16/06/97

ORAL JUDGEMENT

This appeal is directed against the impugned

judgment and order passed by the learned Single Judge in Special Civil Application No. 2391 of 1980, on September 5, 1980.

2. The appellants are the original plaintiffs who approached the Mamlatdar by filing a Suit being Suit No. 7 of 1980, under the provisions of the Mamlatdar's Court Act, 1906. Alongwith the plaint, an application was filed for getting interim order. The Mamlatdar, by an order dated August 27, 1980 granted interim relief till disposal of the Suit pending in his Court. The said Order was challenged by the defendants by filing the above petition. When the petition came up for hearing, the learned Single Judge was of the view that in view of the reported decision in the case of Suleman v. Mahavir, reported in 4 GLR p-131, Mamlatdar could not have granted interim injunction in a Suit under Section 5 of the Mamlatdar's Court Act. In view of the said decision, the learned Single Judge interferred with the order passed by the Mamlatdar and vacated the ad-interim relief and made the rule absolute, by allowing the petition. That order was challenged by filing the present Letters Patent Appeal. When the appeal came up for hearing, the Division Bench of this Court admitted the said appeal on September 9, 1980 and in Civil Application, rule was issued and interim relief was granted against the order passed by the learned Single Judge.

3. Today the matter is called out for final hearing. Looking to the facts stated hereinabove, it is clear that the suit was pending before the Mamlatdar's Court and the suit is of the year 1980. By this time, the main matter must have been disposed of. Even otherwise, this Letters Patent Appeal must be disposed of today. As is clear, the Mamlatdar has granted ad interim relief, which was vacated by the learned Single Judge, when the learned Single Judge allowed the petition. The said order was stayed by the Division Bench and that stay is operative till today. Virtually, therefore, ad interim relief granted by the Mamlatdar during the pendency of Suit in his Court must be operative in case the suit is pending. It is, therefore, clear that no purpose would be served by expressing any opinion at this stage, on merits.

4. If the suit before the Mamlatdar's Court is disposed of, then nothing survives. But, even if it is not disposed of, ad interim relief shall remain operative in view of the order passed by the Division Bench. It is directed that the said order will remain operative till he disposes of the suit, and the Mamlatdar is directed to dispose of the suit as expeditiously as possible,

preferably within a period of three months; if by that time, the suit is not dispose of. In view of this, we do not see any reason to interfere with the order and accordingly dispose of the appeal with no order as to costs.

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Prakash\*